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Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Contemporary Forms
of Slavery
Sixteenth session
29 July-2 August 1991
Items 4 and 5 of the provisional agenda

PREVENTION OF TRAFFIC IN PERSONS AND THE EXPLOITATION OF THE PROSTITUTION OF OTHERS

REVIEW OF DEVELOPMENTS IN OTHER FIELDS OF CONTEMPORARY FORMS OF SLAVERY

Information submitted by Governments, United Nations organs, specialized agencies and intergovernmental organizations

Note by the Secretary-General

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I. Introduction

1. By its decision 16 (LVI) of 17 May 1974, the Economic and Social Council authorized the Sub-Commission on Prevention of Discrimination and Protection of Minorities to establish a five-member working group to review developments in the field of the slave trade in all their practices and manifestations, including the slavery-like practices of apartheid and colonialism, the traffic in persons and the exploitation of the prostitution of others as defined in the Slavery Convention of 1926, the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery of 1956, and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949.

2. The Sub-Commission, by resolution 1988/31, approved the programme of work of the Working Group for the period 1989-1991, which was revised by Sub-Commission resolution 1990/3. The programme of work (contained in chapter VI of the report of the Working Group on its thirteenth session (E/CN.4/Sub.2/1988/32)) included three main themes to be discussed in successive years: prevention of the sale of children, of prostitution of children and of the use of children in pornography (1989); eradication of the exploitation of child labour and of debt bondage (1990); and prevention of traffic in persons and of the exploitation of the prostitution of others (1991).

3. A note verbale and a letter dated 28 December 1990 were sent by the Secretary-General, respectively, to all States and to United Nations organs, specialized agencies and intergovernmental organizations concerned, inviting them to submit information to the Working Group on Contemporary Forms of Slavery and drawing their attention to the main theme, prevention of traffic in persons and of the exploitation of the prostitution of others, to be singled out for discussion at the sixteenth session of the Working Group, in 1991.

4. By 1 May 1991, the Governments of Austria, Barbados, Brunei Darussalam, Colombia, Egypt, Pakistan, Rwanda, Tunisia and Tuvalu had submitted their communications. A summary of substantial replies is reproduced below.*

5. Additional replies, if any, will be published in addenda to the present document.

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* The full texts of the replies are available for consultation in the Secretariat files.

II. Information received from States

AUSTRIA

[18 March 1991]
[Original: English]

1. Within the framework of the Council of Europe, Austria has taken an active part in the deliberations of the Select Committee of Experts on Sexual Exploitation, Pornography and Prostitution of, and Trafficking in, Children and Young Adults. These deliberations led to the finalization of a draft recommendation on the subject matter, to be submitted to the next plenary session of the European Committee on Crime Problems for adoption.

2. Furthermore, a special commission of the Hague Conference on International Private Law is currently entrusted with the task of drafting a comprehensive agreement on international cooperation and protection of children with respect to international adoptions. The issues addressed in this connection include, inter alia, the examination of ways and means to prevent unlawful adoption (in particular, the problem of the sale of babies involving unlawful pecuniary advantages for third parties).

BARBADOS

[22 March 1991]
[Original: English]

The Government of Barbados fully endorses the principles of the programme of action for the prevention of the sale of children, child prostitution and child pornography. Many of these principles are of particular relevance to programmes on child abuse, adoption and foster care which have been adopted by the Barbados Child Care Board. There is no indication that the sale of children exists in Barbados. The Government is presently formulating legislation to protect children from exploitation through the making and sale of indecent photographs and matters related thereto.

BRUNEI DARUSSALAM

[11 March 1991]
[Original: English]

As regards the prevention of traffic in persons and the exploitation of the prostitution of others the Ministry of Foreign Affairs wishes to inform that the appropriate authorities in Brunei Darussalam have so far succeeded in preventing those illicit activities mentioned and offenders are being referred to courts of law for the purpose of prosecution in accordance with the existing legislation. Further measures will continue to be taken to combat the said activities.

COLOMBIA

[20 March 1991]
[Original: Spanish]

With regard to item 2 of the Programme of Work, concerning the prevention of traffic in persons and exploitation of the prostitution of others, Chapter V of the Colombian Penal Code, entitled "Procuring", provides for the following penalties:

"Article 308. Inducement to prostitution. A person who, for purposes of profit or to gratify the desires of another person, induces a person of decent behaviour to engage in carnal intercourse or prostitution shall be liable to imprisonment for a term of one to three years.

Article 309. Coercion into prostitution. A person who, for the purposes of gain or to gratify the desires of another person, coerces a person of decent behaviour into engaging in carnal intercourse or prostitution shall be liable to imprisonment for a term of two to seven years.

Article 310. Circumstances aggravating punishment. The penalty for the offences described in the foregoing articles shall be increased by one third to one half in the following cases:

(1) If the offence is perpetrated against a person under 14 years of age;

(2) In the circumstances described in article 306 (3);

(3) If the conduct takes place for the purpose of taking the victim abroad.

Article 311. Traffic in women and children. A person who promotes or facilitates the entry into or exit from Colombia of a woman or of a minor of either sex for the purpose of their engaging in prostitution shall be liable to imprisonment for a term of two to six years and to a fine of 10,000 to 100,000 pesos.

Article 312. Inciting minors to prostitution. A person who uses a house or establishment for the performance of sexual acts in which children of under 14 years of age participate shall be liable to imprisonment for a term of six months to four years."

In addition, traffic in persons and exploitation of the prostitution of others, as one of the contemporary forms of slavery, are dealt with in article 22 of our Constitution, which prohibits slavery in Colombia.

With regard to item 3 of the Programme, which concerns other contemporary forms of slavery such as the sale of children, child prostitution and child pornography, exploitation of child labour and child soldiers, I attach a copy of the note sent on 25 January 1991 to Mr. Vitit Muntarbhorn, Special Rapporteur of the Commission on Human Rights on the question of the sale of children, child prostitution, child pornography and the question of the adoption of children for commercial purposes, which describes the policies and legislation adopted in Colombia for the prevention of such violations of the rights of children.

In this connection, it should merely be added with regard to the question of the recruitment of minors into the Government Armed Forces, that, under Act No. 1 (a) of 1945, all Colombian males between the ages of 18 and 50 must perform military service. No children or minors are members of the Colombian armed forces, and recruitment is conducted in accordance with the above-mentioned Act and the provisions of Decree No. 1393 of 1956.

As for the slavery-like practices of apartheid and colonialism, we respectfully suggest that reference be made to the first report of Colombia on the implementation of the International Convention on the Suppression and Punishment of the Crime of Apartheid, submitted to the Group of Three of the Commission on Human Rights in February of this year.

EGYPT

[26 March 1991]
[Original: Arabic]

1. Discrimination between boys and girls, which is first observed in early childhood in regard to nutrition, education and the distribution of roles, for example, and which implants in the minds of children the belief that boys are superior to girls from the standpoint of their mental and intellectual capabilities. A public information campaign should therefore be undertaken at the national level in order to eliminate this discrimination.

2. The continuation of discrimination against women, who are unable to enjoy their constitutional rights because, although laws and legislation guarantee equality between men and women in the fields of employment, education and ancillary services, the manner in which these laws are actually applied reveals the existence of a deep disparity between the sexes. For example, we find that, although women constitute half of the population, the female proportion of the national labour force amounts to less than a quarter. This is largely due to the narrow-mindedness of some employers who frankly refuse to recruit women. Moreover, ... (line missing from the Arabic text) ... as provided by law, such as the establishment of nurseries for the children of female workers.

A country-wide endeavour must be made to stimulate public awareness of the important role of women in the development process, as well as the fact that the services that provide care for children or help women to reconcile employment with their family role constitute services for the family as a whole and not solely for women.

PAKISTAN

[28 November 1990]
[Original: English]

1. Under Article 11 of the Constitution of the Islamic Republic of Pakistan, slavery stands forbidden and no law shall permit or facilitate its introduction into Pakistan in any form; all forms of forced labour and traffic in human beings are prohibited. The said Article further guarantees that no child below the age of 14 years shall be engaged in any factory or mine or any other hazardous employment.

2. Under the penal law of Pakistan, the selling or buying a person (including children) for the purpose of prostitution or illicit intercourse is punishable with the longest term of imprisonment i.e. imprisonment for life which means 25 years. Kidnapping or abduction in order to subject a person or for that matter any child to unnatural lust is punishable with death or rigorous imprisonment for a term which may extend to 25 years (sections 12, 13 and 14 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979). Kidnapping or abduction of children under the age of 14 years for the purpose of slavery or to the lust of any person is punishable with death or with imprisonment for life or with rigorous imprisonment for a term which may extend to 14 years (section 364A Pakistan Penal Code). The inducement of a minor girl with a view to force or seduce her to illicit intercourse is punishable with imprisonment which may extend to 10 years and fine (section 366A PPC). Importation of young girls into Pakistan from any foreign country for the purpose of illicit intercourse is also punishable with imprisonment which may extend to 10 years and fine (section 366B PPC). Buying or disposing or selling of any person and for that matter any child for the purpose of slavery is punishable with imprisonment of either description for a term which may extend to seven years or fine (section 370 PPC).

3. Sale, distribution or publicity of any book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, is punishable with imprisonment of either description for a term which may extend to three months, or with fine, or with both (section 292 PPC). The sale, distribution and exhibition or circulation of such obscene object as aforesaid to young persons is punishable with imprisonment of either description for a term which may extend to six months or with fine or with both (section 293 PPC).

4. The transmission by post of any indecent or obscene printing, painting, photograph, lithograph, book or card, or any other indecent article is prohibited under section 20 of the Post Office Act, 1898, and is liable to detention.

5. The legislation for abolition of bonded labour system including the bonded labour in children is also in process.

6. The laws in force in Pakistan have already adequate provisions to control the sale of children, child prostitution and child pornography and we do not think there is any need for further legislation, at least, for the time being.

RWANDA

[28 January 1991]
[Original: French]

Sale of children

1. The sale of children is not a crime under Rwandese law, since this phenomenon is unknown in Rwandese society. However, the Rwandese Republic firmly supports all those who are fighting to eliminate this scourge to which many children fall victim in some parts of the world. It was partly for this reason that the Government of Rwanda signed and ratified the Convention on the Rights of the Child which, in its article 35 in particular, deals with the prevention of the abduction, sale or traffic in children.

Child prostitution and child pornography

2. In the case of prostitution, the Criminal Code of Rwanda punishes any person who encourages prostitution or who exploits the prostitution of adults or of minors. However, the prescribed penalties are doubled when the offence is committed against a person under the age of 18. A copy of the relevant legislation is appended.

3. As in the case of the sale of children, child pornography does not exist in Rwanda.

4. Nor does the problem of the adoption of children for commercial purposes exist in our country.

TUNISIA

[26 March 1991]
[Original: French]

Prevention of traffic in persons and the exploitation of the prostitution of others

1. Since prostitution and its accompanying evil, i.e. traffic in persons for purposes of prostitution, are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community, Tunisian positive law has vigorously punished such practices. Various cases are covered by the Criminal Code.

2. Women who, by their actions or their words, offer themselves to passers-by or engage in prostitution even on an occasional basis are liable to imprisonment for a term of six months to two years and to a fine of 20 to 200 dinars. Any person having sexual relations with such women is regarded as an accomplice and liable to the same penalties (art. 231).

3. Any man or woman is regarded as a procurer and liable to imprisonment for a term of one to three years and to a fine of 100 to 500 dinars if he or she:

(a) Knowingly and in any way at all aids, protects or is involved in the prostitution of others or in soliciting with a view to prostitution;

(b) Shares in any form at all in the proceeds of the prostitution of others or receives payments from a person engaging habitually in prostitution;

(c) Knowingly lives with a person engaging habitually in prostitution and cannot demonstrate sufficient resources to support himself or herself alone;

(d) Procures, induces or maintains with a view to prostitution any person including persons of legal age, even with his or her consent, or forces such a person to engage in prostitution or debauchery;

(e) Acts as an intermediary, on any basis, between persons engaging in prostitution or debauchery and persons who exploit or pay for the prostitution or debauchery of others (art. 232).

4. The penalty is imprisonment for a period of three to five years and a fine of 500 to 1,000 dinars if:

(a) The offence is committed against a minor;

(b) The offence is accompanied by compulsion, abuse of authority or rape;

(c) The offender carries an unconcealed or concealed weapon;

(d) The offender is the spouse, ascendant or guardian of the victim or has authority over the victim, or if he is the victim's employer, or if he is a teacher, civil servant or minister of religion, or if he is assisted by one or more persons (art. 233).

5. The penalties prescribed in articles 232 and 233 of the Criminal Code are imposed even when the various acts constituting the offences are performed in different countries. In addition, persons convicted of the above-mentioned offences are liable to banishment from their local area for a maximum period of 10 years (art. 235).

Child prostitution

6. The Criminal Code provides that "any person who offends public morality by inciting, promoting or facilitating the debauchery or corruption of minors of either sex shall be liable to imprisonment for a period of one to three years and to a fine of 100 to 500 dinars" (art. 234).

7. In addition, the order of 30 April 1942 governing prostitution in the Regency, forbids the proprietors of houses of prostitution "to admit minors of either sex" or "to admit to or keep in their houses children over the age of two" (art. 21, paras. 4 and 9).

Exploitation of child labour

8. In Tunisia the minimum working age is 18 years. However, in view of the advantages of giving young people vocational training to enable them to acquire a skill, the legislature has set a minimum age for the employment of young people as apprentices. This age is 15 years in industrial enterprises. In agriculture, the minimum age is lowered to 13 years provided that the work is not harmful to the health or moral development of the children and that their school attendance is not affected (arts. 53 and 55 of the Labour Code).

Sale of children and debt bondage

9. These practices are not known in Tunisia. Furthermore, Tunisian law prohibits imprisonment for contractual debt; there is no penalty of detention for persons unable to meet their contractual obligations. In fact, the Code of Civil and Commercial Procedure provides only for distraint on the debtor's property.

"Child soldiers"

10. This phenomenon does not exist in Tunisia. In fact, only citizens aged at least 20 years are liable to perform national service (military service). Furthermore, dispensations may be granted in respect of verified physical incapacity (art. 1 of Law No. 86-27 of 2 May 1986 concerning national service, as amended by Law No. 87-58 of 13 November 1987).

Slavery and the slave trade

11. The abolition of slavery in Tunisia dates back to the nineteenth century when, by decree of 23 January 1846 penal sanctions were imposed on all persons convicted of engaging in the slave trade.

Independent Tunisia, which has proclaimed its commitment to "human dignity, justice and freedom" (preamble to the Constitution) and has guaranteed "the inviolability of the human person", acceded in 1966 to the Slavery Convention of 25 September 1926, as amended by the Protocol of 7 December 1953, and to the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of September 1956. Tunisia's accession to these conventions is confirmation that slavery has disappeared.

Slavery-like practices of apartheid and colonialism

12. The preamble to the Tunisian Constitution proclaims the will of the Tunisian people to "uphold the human values that are the common heritage of peoples who are committed to human dignity, justice and freedom". Also, in articles 5 et seq., the Tunisian Constitution sets forth the fundamental human rights and freedoms. These rights, which are recognized and guaranteed under the Constitution, apply to everyone, without discrimination or reference to race, religion, political or other opinion, national or social origins, wealth or birth.

13. The Constitution provides:

Under article 5, for the guarantee of the dignity of the individual, freedom of conscience, and freedom to practise religion;

Under article 6, for equality of all citizens with respect to their rights and duties and equality before the law;

Under article 7, for the exercise by all citizens of their full rights;

Under article 8, for the guarantee of the freedoms of opinion, expression, press, publication, assembly and association;

Under article 9, for the guarantee of inviolability of the home and confidentiality of correspondence;

Under article 10, for the right of every citizen to move about freely within the territory, to leave it and to choose his residence;

Under article 11, for a prohibition on banishment of a citizen or on preventing him from returning to his country;

Under article 12, for a presumption of innocence for any accused person until he has been proved guilty in proceedings that afford the guarantees essential for his defence;

Under article 13, for the principle of the personal nature of the penalty and of the non-retroactivity of laws.

14. Furthermore, the Tunisian Constitution has moved beyond the traditional approach to public freedoms and has adopted the modern approach, vesting the political democracy which it proclaims with an economic and social content. For instance, in addition to the traditional rights proclaimed since 1789, it affirms economic and social rights such as the right to education, the right to work, and the right to health. Article 8 guarantees trade union rights while article 16 guarantees payment of taxes and contributions to public expenditure on an equitable basis.

15. Tunisia has also acceded to a number of conventions relating to human rights and in particular to those relating to non-discrimination. These conventions, which have been incorporated into its internal law and rank higher in authority than that law (under article 32 of the Constitution), confirm and clarify the prohibition of different forms of discrimination. Listed below are some of the conventions ratified by Tunisia:

The International Convention on the Elimination of All Forms of Racial Discrimination (ratified in 1966);

The Convention against Discrimination in Education, adopted by the UNESCO General Conference (ratified in 1969);

The Convention on the Elimination of All Forms of Discrimination against Women (ratified in 1985);

The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (ratified in 1966);

The International Covenant on Civil and Political Rights (accession in 1969);

ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation (ratified in 1959).

16. The Tunisian Constitution further affirms the will of the Tunisian people to "remain faithful ... to cooperation with peoples fighting for justice and freedom". It should be noted in this connection that Tunisia has provided all peoples struggling for their independence and against apartheid with multi-faceted aid at the political and diplomatic as well as the financial and material levels.

TUVALU [21 February 1991]
[Original: English]

The Constitution of Tuvalu, with certain qualifications, states that no one shall be held in slavery or servitude, or be required to perform forced labour. Forced labour does not, inter alia, include (i) labour required by or in consequence of the sentence or order of a court; (ii) in the case of a person under the age of 18 years - labour required in the reasonable exercise of the authority of a parent, teacher or guardian; or (iii) labour reasonably required as part of reasonable and normal traditional, communal or civic obligations or in the event of conscientious objection to the performance of such obligations, the rendering of equivalent service of benefit to the community failing which exclusion from any benefit from the performance of such obligations. The Employment Act forbids the employment of children under the age of 14, and restricts young persons up to 18 years of age from certain employments.